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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: Kovar et al.

APR 18 2005

Serial No.: 09/898,379

Group Art Unit: 2633

Filed: 7/5/2001

Examiner: DZUNG D. TRAN

Title: *Optical Modulator and Method for Polarization Bit Interleaving*RENEWED PETITION UNDER 37 CFR 1.137(a)

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the decision mailed on February 18, 2005, we are submitting a renewed petition under 37 CFR 1.137 (a).

It was determined that the above application had become abandoned for failure to submit a response to an outstanding office action mailed June 7, 2004.

According to MPEP Section 711.03(c) "A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the bases for a showing of "unavoidable" delay, provided it is shown that: (A) the error was the cause of the delay at issue; (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

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(A) Docketing errors, which occurred on or about June 7, 2004, prevented employees from Lacasse & Associates, LLC to be able to have the knowledge that the response to the office action mailed on 06/07/2004 was due, because the office action was never entered into the firm's case management software, which calculates all due dates and creates reminders for patent agents and administrative staff.

(B) After opening all incoming mail from the United States Patent and Trademark Office, the proper procedure for docketing incoming USPTO correspondence, specifically office actions, is as follows: (1) Log into CTS (our case management software); (2) while in CTS, search for our docket number by typing in the U.S. application number in the search form; (3) write our docket number on the envelope or a post-it note and attach it to the corresponding USPTO correspondence; (4) retrieve the file wrapper of the corresponding file from our record room; (5) write the mailing date of the office action on the front cover of the file wrapper; (6) return to CTS and access the office action screen of the corresponding case; (7) enter the mailing date from the front page of the office action into the "mailing date" field of the office action screen; (8) upon entering the mailing date at the office action screen, the software will prompt the user to enter the mailing date again in order to confirm the accuracy of the entry; (9) after entering the mailing date to confirm accuracy, the software generates two dates -- (a) the "Date Due", which is three months from the mailing date of the office action (two months if a final office action); and (b) the "Last Date to File", which is six months from the mailing date of the office action; (10) the user will be prompted to accept the dates; (11) after accepting the dates, the user then generates a letter to the client, notifying him of an office action; (12) the user then generates an amendment form for the patent agent to complete at a later date; (13) the employee makes two copies of the office action -- the original office action is sent to the client, one copy of

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the office action is hole-punched and placed in the incoming USPTO correspondence section of the file wrapper, and the other copy of the office action is placed in a working folder for the patent agent; (14) the employee then creates several labels for the patent agent's working folder indicating the following -- (a) our docket number for the case, (b) the two-month due date for the response to the office action, and (c) the three-month due date for the response to the office action; (15) the labels are placed on the front of the working folder and the copy of the office action is stamped with "COPY" on the front and placed in the working folder; (16) the employee gives the file wrapper to another employee who enters the following information into the shared "Patent Dept. Office Actions" task list in Microsoft Outlook -- the docket number, patent application title, client contact information, type of response needed, assigned patent agent initials, an indication of a "final" office action (if the office action is final), the due date, and the month of response for that due date; (17) the working folder and file wrapper are given to the appropriate patent secretary; (18) the patent secretary enters the due date on their personal desk or wall calendar; (19) the patent secretary enters the due date on the desk or wall calendar of the Assistant Manager of Administrative Services; and (20) finally, the working folder and file wrapper are given to the appropriate patent agent who will work on the response to the office action.

(C) The employee in charge of docketing all incoming patent prosecution work began her employment with our firm as a Patent Secretary on April 15, 2002. She was trained by a senior staff member, the Manager of Administrative Services, on the patent prosecution process and the importance of docketing and inputting correct dates into our case tracking software, CTS Version 5. She had been inputting information into our case tracking software for over a year and a half before being promoted to the position of Assistant Manager of Administrative

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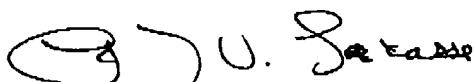
Services. The Assistant Manager of Administrative Services was adequately trained to perform the duties of collecting the office mail, specifically U.S.P.T.O. mail for entering into the office database system for tracking USPTO correspondence. Said Assistant Manager performed these duties on a regular basis for almost a year and a half without fail, therefore there was no reason to doubt her competence.

Applicant has provided two signed statements from employees that can attest to the procedures for docketing incoming USPTO correspondence at Lacasse & Associates, LLC and to the competence of the Assistant Manager of Administrative Services.

Applicant's representative is establishing unavoidable delay in submitting the required document based on docketing errors on or about June 7, 2004.

Applicant's representative respectfully requests that the above application be revived and the Petition for Unavoidable Delay be granted.

Respectfully submitted,



Randy W. Lacasse  
Registration No. 34,368

1725 Duke Street  
Suite 650  
Alexandria, Virginia 22314  
(703) 838-7683  
April 18, 2005